

## Members

Sen. Charles Meeks, Chairperson  
Sen. Anita Bowser  
Rep. Scott Mellinger  
Rep. Ralph Foley  
Mary Beth Bonaventura  
Chris Beeson  
Lance Hamner  
Madonna Roach  
Joe Hooker  
Glenn Boyster  
Chris Cunningham  
Judge Thomas Ryan  
Sharon Duke  
Iris Kiesling  
David Matsey  
Craig Hanks  
Dave Powell  
Steve Cradick  
Jim Brewer  
Robert Chamness  
LSA Staff:

Christi Megna, Attorney for the Committee  
Mark Bucherl, Fiscal Analyst for the Committee

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# PROBATION SERVICES STUDY COMMITTEE

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## MEETING MINUTES<sup>1</sup>

Meeting Date: September 22, 1999  
Meeting Time: 10:00 A.M.  
Meeting Place: State House, 200 W. Washington St., Room 404  
Meeting City: Indianapolis, Indiana  
Meeting Number: 2

**Members Present:** Sen. Charles Meeks, Chair; Sen. Anita Bowser; Rep. Scott Mellinger; Rep. Ralph Foley; Madonna Roach; Joe Hooker; Chris Cunningham; Sharon Duke; David Matsey; Craig Hanks; Judge Thomas Ryan.

**Members Absent:** Lance Hamner; Glenn Boyster; Mary Beth Bonaventura; Chris Beeson; Steve Cradick; Jim Brewer; Robert Chamness; Iris Kiesling; Dave Powell.

**I. Call to Order** Sen. Charles Meeks began the meeting at 10:05 a.m.

## **II. Witness Testimony**

### **A. Todd McCormack, Hendricks County Chief Probation Officer: Probation Officer Salaries, Case Classification, and Certification**

Todd McCormack distributed materials summarizing his presentation to the committee (Exhibit 1). These described such items as probation officer qualifications, training, and continuing education requirements. He compared the number of persons on probation in 1988 and 1997 (42,150 and 65,760, respectively), saying that this 36 percent increase in cases was met by only a 26 percent increase in staff in that period. Mr. McCormack discussed the breakdown of probationers into felons and misdemeanors supervised, and said that felons were the fastest growing segment. Of the 33,976 felons currently under supervision, 13,625 had served time in a Department of Correction (DOC) facility and were now serving probation on a split sentence. Mr. McCormack estimated that just those felons on split sentence probation saved the state about \$223 million in 1997 (based on \$17,000 average DOC incarceration cost and his estimated probation average cost of \$617). He said that probation is about 94 percent successful based on those committing new crimes.

Mr. McCormack described the case classification system developed in cooperation with the Indiana Judicial Center (which publishes a classification report). This system predicts the number of minutes of supervision required for each offender per month, by risk level (i.e., higher risk cases are allotted more

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<sup>1</sup>Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

time) which helps determine probation officer workload and the number of officers needed. Lastly, he described adult and juvenile risk assessment instruments (see Exhibit 1) used to determine the amount of supervision probationers should receive.

Sen. Meeks asked if the juvenile risk assessment considers each specific offense. Mr. McCormack replied that it relies only on the number of previous offenses, though supervision may be increased by administrative decision for certain offenses, such as child molesting. Sen. Meeks asked who decides when more probation officers are needed. Judge Thomas Ryan said judges do. Mr. McCormack added that more probation officers are needed due to the creation of new criminal offenses and could also be related to more police officers making more arrests. Rep. Scott Mellinger asked if more persons are now being put on probation who might have gone to jail in the past. Mr. McCormack replied that there are more felons under supervision now, and jail overcrowding also contributes to more persons being placed on probation. Sen. Meeks asked if hiring more probation officers would help. Mr. McCormack suggested that placing fewer persons on probation would be a better solution. He explained that a small segment of the probation population are persons for whom just going through the justice process was deterrent enough—for these people, probation is unnecessary, but is often “tacked on” to their suspended sentences.

An additional aid, Judge Ryan suggested, would be to decrease the number of those charged with technical violations, especially for traffic offenses (such as driving with a suspended license or driving under the influence of alcohol). He stated that when such offenders become habitual violators, he has no statutory choice but to send them to prison, often on a split sentence (which ends in probation). He said that this is a significant problem in Allen County, especially with limited functioning individuals.

Judge David Matsey stated that the increasing number of felons on probation is due to new and enhanced crimes (e.g., second offenses and drug offenses “near schools,” that are now felonies), many with minimum mandatory sentences and increased probation terms. Judge Ryan suggested that legislative efforts could be directed toward allowing offenders to demonstrate rehabilitation, such as in allowing drivers to rehabilitate their licenses.

Sen. Anita Bowser asked if there is reciprocal supervision among states for Indiana probationers working in these states. Mr. McCormack answered that an interstate compact exists for supervision between states. Sen. Bowser asked if supervision of other states’ probationers increases Indiana caseloads. Mr. McCormack replied that caseloads in border counties can increase, but that inter-county supervisions can also be a problem (e.g., many people commit crimes in Marion County but are supervised by the Hendricks County probation office). Judge Matsey stated that only about five percent of those on probation are from interstate supervisions.

Sen. Meeks asked if privatizing the supervision of low risk probationers was an option. Mr. McCormack replied that restructuring the system to provide better services would be a better alternative. Sen. Meeks asked whether the increase in probationer caseloads necessitates more funding and hiring more probation officers, since the public desires increased penalties for crimes (and longer probation periods). Mr. McCormack replied that a combination of solutions is required and questioned whether the public’s “get tough on crime” attitude might be overrated in view of the long-term cost of locking people up.

Judge Ryan said that, in his 30 years of court experience, most juries acquit DUI offenders, unless there is a heinous crime involved or a clear pattern of intoxication is established. He suggested that constituents are more inclined to punish those who prey on others, and he added that many inmates serve their time without access to meaningful programs which might address reasons for their criminality such as drug abuse. He suggested state and community resources be directed to substance abuse treatment as a priority.

Judge Matsey stated that, in his experience, DUIs are convicted at relatively high rates, and the primary offenses for his jail population (60 to 75 percent) are alcohol and drug offenses. He added that the public wants crime accountability and effective rehabilitation. He also questioned whether privatized probation providers would take high risk cases.

Lance Hamner asked what costs are covered by probation user fees in the state. Mr. McCormack replied that, in Hendricks County, 45 percent of operational costs are covered by user fees. Mr. Hamner responded that his county misdemeanor court is entirely funded by user fees, as is the county corrections program. He asked why a bachelor's degree is required to be a probation officer. Jeff Bercovitz, Indiana Judicial Center, explained that a degree requirement was added to professionalize the profession and that about 75 percent of probation officers have work-related degrees in social work, criminology, etc.

Judge Ryan inquired how reliable Mr. McCormack thought the classification system was in predicting probationer risk. Mr. McCormack replied that, "on a one to ten scale, reliability was about an eight." Judge Ryan suggested that if this reliability was recognized by statute, courts might be impelled to place low risk offenders on administrative probation (requiring little or no supervision). Mr. McCormack agreed with that concept, but added that, at the other extreme, five to ten percent of high risk probationers require inordinate probation resources and would be better placed in prison, especially since these probationers often violate their probation and are put back in prison anyway. Judge Ryan asked if persons are sometimes kept on probation in order to preserve user fee revenue. Mr. McCormack responded that it does happen.

#### **B. Judge David Matsey, Starke County Circuit Court: Probation Officer Salaries**

Judge Matsey summarized the statutory framework that allows the board of the Indiana Judicial Conference to establish probation officer salaries. A 12-member board subcommittee (on which Judge Matsey is a member) recommended the new salary schedule that was implemented in 1996 (see Exhibit 1). Mr. Bercovitz stated that about two-thirds of the counties pay salaries above the schedule minimums. Sen. Meeks asked if this could be construed as a mandate on counties. Mr. Bercovitz replied that it was a "shall provision."

Sen. Meeks asked how probation officer salaries compared to teacher salaries. Judge Matsey provided 1996 survey examples of higher salaried positions in his county, including those of teachers who earn from \$25,000 to \$29,000 (a probation officer's starting salary is \$21,138). Mr. Bercovitz explained that probation officers often leave their job after four years for higher salaried positions. Sen. Meeks asked why there is such a salary disparity for probation officers. Judge Ryan responded that judges are reluctant to urge higher salaries because of criticism from the Indiana Association of Counties. When judges approach county councils with salary "shall provisions," the association response is to seek legislation to eliminate mandates and limit judicial authority in financial matters. Judge Matsey suggested that counties seek state support of probation services because of the vital pre-sentence reports they produce and the application of split sentences that benefit the state (by diverting offenders from DOC).

Sen. Meeks questioned state support of probation offices without a means of determining how efficiently they utilize user fee revenue. He also questioned whether the state legislature should act when the judicial conference already has salary authority. Judge Matsey responded that in 1997, \$8 million was raised in probation user fees, but that his county fees partially cover salaries and fund rehabilitative programs as well. Mr. Hamner stated that his county's misdemeanor court charges only certain classes of offenders who are able to pay them. Judge Matsey added that about 60 percent of his offenders require court-appointed counsel, so fees may be out of the question for these people.

Sen. Meeks referred to a Legislative Services Agency memo (Exhibit 2) estimating that it would cost about \$14.9 million to fund one-half of probation officer salaries in the state. He asked if user fees should be increased to cover salaries. Judge Ryan stated that reliance on fees should not be forced when such a practice could be abused (e.g., compelling people to remain on probation to continue receiving fee revenue).

Sen. Meeks questioned why seemingly successful, fee generating work release programs in Steuben and Allen counties could not be replicated in other counties. Judge Ryan responded that it is a more complex problem than it seems. Jim Brewer added that some counties may be unable to replicate their success, i.e., people have to be able to find and continue employment in order to stay in a work release

program.

Craig Hanks stated there is a precedent for state subsidy of local court services in that the DOC pays the salaries of two county prosecutors for work at his correctional facility. He suggested that such a funding relationship should be possible for community corrections. Rep. Mellinger asked where a proposed subsidy would be better spent: to increase salaries or the number of probation officers. Judge Matsey suggested increased salaries.

### **C. Law Enforcement Powers for Probation Officers**

**Linda Brady, Chief Probation Officer, Monroe County Probation Office** Ms. Brady spoke in opposition to the delegation of law enforcement powers to probation officers. She stated that a recent request to carry a weapon by a probation officer in her office was refused by the board of judges due to concern with liability. She cited several probation jurisdictions, nationally, where weapon possession by probation officers is being debated on safety and liability issues. She recounted one probation officer in her office who quit when he was not able to carry a gun. (He was later fatally shot after he had become an armed police officer.) She said that the National Institute of Corrections suggests providing the option to carry weapons, and she proposed that such an option should be pursued by legislative action with training required. She added that if probation officers are required to provide law enforcement duties, they should be paid more and receive similar retirement benefits.

**Carolyn Foley, Chief Probation Officer, Allen County Juvenile Probation Office** Ms. Foley described her background as a former deputy prosecuting attorney. She said that in Allen County one of her probation officers was shot and now probation officers attend the Ft. Wayne Training Academy to qualify with guns quarterly. She added that their juvenile department has an around-the-clock dispatcher with whom probation officers check in constantly because of the violent children with whom they deal. However, she recalled only one incident in 15 years when a gun was drawn by an officer from her office.

Ms. Foley cautioned that the roles of probation officers and police should not be confused and emphasized that her job is to make sure “every kid has care and treatment.” She expressed trepidation that law enforcement activities might be “pushed onto” probation offices, especially in juvenile law, if probation officers had police powers. She also did not want to “step on police officers’ toes.” However, she said some enforcement powers would be helpful, such as with officers who serve warrants to juveniles and often chase them down. They can not charge them with resisting arrest. She advised that any delegated law powers should be carefully structured.

Judge Matsey stated that there is no consensus among judges about law enforcement powers for probation officers, but that three-fourths of judges thought probation officers could carry guns for safety purposes, if properly trained. Judge Ryan noted that there is no evidence that either of the two probation officer fatalities would have been prevented if they had weapons. He said that in his probation office, when officers see a violation, they are instructed to return to the office and prepare a warrant for police.

Rep. Foley suggested that provisions be made for probation officers to receive training at the police academy in the exercise of police powers and weapons use. Mr. Hamner recounted his experience as a police officer in Utah where probation officers are “peace officers” and learn the basic elements of law enforcement in a two-week training course.

**David Murtaugh, Indiana Sheriffs Association** Sheriff Murtaugh stated that probation officer training may be needed, but that the Indiana Law Enforcement Training Academy did not have enough capacity for them. He added that, unlike in Utah, there are no varying classification levels of police in Indiana and that this issue should be addressed at the local level. Mr. Hooker stressed that in 23 years his office has never been refused police assistance when it was needed and that probation officers do not need law enforcement powers.

Sen. Meeks asked if statutory authority provides for probation officers to carry weapons. Ms. Foley responded that they obtain personal protection permits, and judges provide an order to carry them

during duty (in her county they receive a county-issued weapon after certification from the Ft. Wayne Academy). Sen. Meeks asked if a probation officer is killed, whether they receive a federal death benefit and their name on the Washington, D.C. officers' memorial wall. Judge Ryan said they did. Judge Matsey added that there is no Indiana death benefit provided to probation officers. Sen. Meeks stated that it appeared no legislation was necessary to provide weapons for probation officers.

Judge Ryan wondered whether the legislature wanted to confer immunity on court officers for possible negligent acts. He suggested that this would conform to a growing body of federal case law which confers immunity to judicial officers with that already given to judges. Sen. Meeks asked if probation officers have civil liability protection. Judge Ryan responded that judicial immunity flows to staff except in circumstances where probation officers exceed their authority. Rep. Mellinger replied that liability protection could hinge on whether the county required a weapon or not.

Madonna Roach stated that all probation officers are concerned with liability issues, but not just in carrying weapons. She questioned whether counties would protect probation officers in any negligence suits filed against them.

Sen. Meeks asked for committee consideration of probation salaries and weapon carrying rights for the last meeting of the committee in order to prepare bill drafts for the next General Assembly. Rep. Foley stated that counties should be assisted with salaries in the same manner that local public defenders are provided assistance, with compliance to certain prescribed standards. Joe Hooker suggested that funding assistance be directed to reducing probation officer workloads, which he believed would be the preference of most officers. Rep. Foley added that legislation be considered for counties to allow probation officers to carry guns after sufficient training.

Mr. Hamner stressed that a short probation officer training program in law enforcement would seem applicable, if only in the area of their investigations work, upon which prosecutors rely. He added that providing probation officers with arrest authority would not require them to use it; judges have such authority, but rarely use it.

Sen. Meeks asked whether the total number of probation officers should be limited if the state provides salary funding. Judge Ryan replied that the judicial conference should maintain probation oversight. Sen. Meeks asked that language be prepared to provide judges with the authority to allow probation officers to carry weapons. Also, he requested that a proposal be drafted on providing state benefits for probation officers who die in line of duty.

### **III. Community Transition Program Resolution Draft**

George Angelone, substituting for committee attorney Christi Megna, described the community transition program resolution (Exhibit 3) and the means in which it could be presented: (1) as a directive sent to the DOC, with prior Legislative Council approval; (2) as a recommendation in the committee's final report; and (3) as a concurrent resolution offered in the General Assembly. Sen. Meeks asked members to review the resolution and prepare to discuss it at the final meeting.

### **IV. Adjournment**

Sen. Bowser asked if a bill draft could be prepared making probation officer salaries mandatory. Mr. Angelone replied that it could. Rep. Mellinger stated his concern with the overwhelming caseloads experienced by probation officers. He asked members to consider a state grant funding program, similar to that provided for hiring police officers, with which counties could receive funding for additional probation officers.

Sen. Meeks scheduled the next meeting for October 20, 10 a.m. The meeting ended at 12:46 p.m.